

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
EDGAR BOARDMAN,)
)
Appellant,)
)
v.)
)
SOUTHWEST AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 761

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being an appeal of a \$25 civil penalty for allegedly permitting and maintaining an open fire in violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 7th day of April, 1975, at Longview, Washington; and appellant Edgar Boardman appearing pro se, and respondent Southwest Air Pollution Control Agency appearing through its attorney, James D. Ladley; and hearing examiner, David Akana, present at the hearing; and the Board having read the transcript, examined the exhibits, records and files herein, and having entered on the 3d day of June, 1975,

1 its proposed Findings of Fact, Conclusions of Law and Order; and the Board
2 having served said proposed Findings, Conclusions and Order upon all
3 parties herein by certified mail, return receipt requested and twenty days
4 having elapsed from said service; and

5 The Board having received appellant's exceptions to said proposed
6 Findings, Conclusions and Order and having considered and denied same;
7 and the Board being fully advised in the premises; now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Finding
9 of Fact, Conclusions of Law and Order, dated the 3d day of June, 1975, and
10 incorporated by this reference herein and attached hereto as Exhibit A, are
11 adopted and hereby entered as the Board's Final Findings of Fact,
12 Conclusions of Law and Order herein.

13 DONE at Lacey, Washington this 1st day of July, 1975.

14 POLLUTION CONTROL HEARINGS BOARD

15 
16 CHRIS SMITH, Chairman

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18 WALT WOODWARD, Member

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

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FINDINGS OF FACT,
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This matter, the appeal of a \$25 civil penalty for allegedly permitting and maintaining an open fire in violation of respondent's Regulation I, came before the Pollution Control Hearings Board, hearing examiner, David Akana, presiding, at a formal hearing in Longview, Washington on April 7, 1975.

Appellant appeared pro se; respondent appeared through its attorney, James D. Ladley. Jennie Roland, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From the transcript read and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 On October 25, 1974, appellant ignited and tended a fire on his
6 property located at 6508 N.E. 58th Street, Vancouver, Washington.
7 Materials consisting of natural vegetation and approximately 20 pieces of
8 asphalt shingles were burned in a pile approximately ten feet in diameter
9 and four to five feet high. Three families contributed to this debris
10 pile. The shingles had been placed in the debris by appellant's helper
11 who had helped clean the yard.

12 Appellant tended this fire and did not notice the shingles there
13 until such time that respondent's inspector appeared at the scene. The
14 fire, which had burned down exposing the asphalt shingles, was put out at
15 the request of the inspector.

16 II.

17 The respondent's inspector issued a Notice of Violation No. CS 0790
18 for causing or allowing the burning of asphalt shingles and burning in
19 violation of Section 4.01 of respondent's Regulation I. From this
20 violation, appellant was assessed with a \$25 civil penalty which penalty
21 is the subject matter of this appeal.

22 III.

23 From a newspaper article, appellant believed that burning was
24 permitted for a four week period beginning October 25, 1974, which was
25 the day of the violation. The only authority the appellant contacted was
26 the fire department three or four days before the burn. Appellant did not

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 obtain any permit for the burn. The first day of the burning period was
2 determined by respondent to be unsuitable meteorologically and no burns
3 were permitted. This fact was given reasonable public notice.

4 IV.

5 Section 4.01 of respondent's Regulation I provides in part that:

6 No person shall ignite, cause to be ignited, permit to be
7 ignited, or suffer, allow, or maintain any open fire within the
8 jurisdiction of the Authority, except as provided in this
9 Regulation.

10

11 (b) Open burning may be done under permit:

12 (1) Application for burning permits shall be on
13 forms provided by the local fire department.

14 (2) No permit shall be issued unless the Control
15 Officer is satisfied that:

16

17 (v) No material containing asphalt, petroleum
18 products, paints, rubber products, plastic or
19 any substance which normally emits dense smoke
20 or obnoxious odors will be burned.

21

22 (d) It shall be (prima facia) [sic] evidence that the person
23 who owns or controls property on which an open fire, prohibited
24 by this regulation, occurs has caused or allowed said open fire.

25 V.

26 Section 2.10 of respondent's Regulation I provides in part that:

27 In addition to or as an alternate to any other penalty
provided herein or by law, any person who violates any of the
provisions of this regulation shall incur a penalty in the form
of a fine in an amount not to exceed Two Hundred Fifty Dollars
per day for each violation. Each such violation shall be a
separate and distinct offense, and in case of a continuing
violation, each days continuance shall be a separate and
distinct violation.

FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

VI.

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board makes these

CONCLUSIONS OF LAW

I.

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

II.

Appellant violated Section 4.01 of respondent's Regulation I by causing or allowing an open fire on his property on October 25, 1974 without a permit. Appellant, however, made a good faith effort to discover the applicable rules by calling the fire department.

III.

Appellant violated Section 4.01 of respondent's Regulation I by causing or allowing, through his agent, a prohibited material, i.e., asphalt shingles, to be burned on his property on October 25, 1974.

IV.

The penalty assessed is just and reasonable in amount under the circumstances.

V.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Pollution Control Hearings Board makes and enters this

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

ORDER

The \$25 civil penalty is affirmed. However, ten dollars of said penalty shall be suspended for a period of one year on the condition that no further violations are caused or allowed by the appellant.

DONE at Lacey, Washington this 3rd day of June, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

Walt Woodward
WALT WOODWARD, Member

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER